

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

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U.S. BANKRUPTCY COURT
DIST OF SOUTH CAROLINA

IN RE:

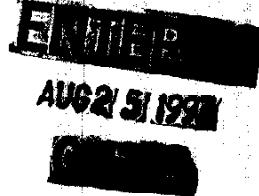
Rockers, Inc.,

Debtor.

ORDER

97-02890-B

Chapter 11



In an endeavor to resolve a contested \$ 362 motion to lift the stay without a hearing brought by the movant, Wachovia Bank of South Carolina (Wachovia), movant and Rockers, Inc. (debtor) heretofore consented to an Order signed by this court on June 13, 1997, which left the stay in tact, pending compliance with several enumerated terms and conditions constituting adequate protection to Wachovia. One such enumerated requirement, as set forth in paragraph four of this Order, directed the debtor to employ Richard Derrick, realtor, to market this single asset of the debtor for \$250,000.00, with all offers being presented to both Wachovia and to the debtor. Said consent Order also provided that the stay would be automatically lifted upon the affidavit of default of movant if certain of these conditions and requirements of adequate protection were not met by the debtor but the requirements in paragraph four were not included as a "drop dead" provision.

Wachovia subsequently brought the present motion now before

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the court to compel the debtor to comply with the consent Order or, alternatively, to modify the stay as the realtor has found a buyer ready and able to purchase this property for \$250,000.00.

The debtor objected to this relief on the basis that paragraph four of the aforementioned Order only required the debtor to market this property for \$250,000.00, not to sell it, and a sale for this amount would not pay creditors other than Wachovia and the debtor would never have intended "market" to mean "sell" in this paragraph.

ISSUES

1. What was the intent of paragraph four of the consent order?
2. If paragraph four has not been complied with, what relief should this court fashion?

CONCLUSIONS OF LAW

Without the requirements of paragraph four of the consent Order, the debtor would not have avoided a contested § 362 hearing which may have resulted in the stay being lifted. The inclusion of this paragraph was important to Wachovia. To interpret paragraph four as the debtor would have the court do, namely to require only that the property be put up for sale but not sold, would accomplish nothing as this would have no consequence or benefit to Wachovia and would render this paragraph meaningless. This court is of the belief, in spite of what the principal of the debtor now says his intent was at the time the Order was signed, that the debtor intended "market" to mean "sell" and this was what Wachovia thought and intended as

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well. In fact, the application to employ the realtor which is in the debtor's bankruptcy file, signed by the principal of the debtor, indicates that the debtor wanted to employ this realtor to sell this property.

The consent Order dealt solely with aspects of adequate protection. One part of such (as in the case of paragraph four) should not be viewed as an independent contract, which if breached is enforceable by specific performance, but rather as an overall element of adequate protection, which if breached is substantial enough to cause the stay to be lifted.

This court is further of the belief that since a failure to comply with paragraph four did not trigger automatic relief from the stay by an affidavit of default as would have been the case regarding some of the other provisions of adequate protection in the Order, the § 362 motion should be placed back on the calendar as a contested matter for this court to hear on its merits, if the parties are otherwise unable to settle this. Although Wachovia requested alternatively in its motion relief from the stay, this aspect of the motion was not sufficiently argued before the court and as a result this court should conduct a hearing and make a "de novo" finding as to what constitutes adequate protection which may or may not include aspects of paragraph four of the consent Order.

NOW THEREFORE, IT IS ORDERED that the motion to compel and the alternative relief to lift the automatic stay are denied at this time. This court reschedules the § 362 motion for a hearing

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on its merits on September 10, 1997, at 9:00 a.m., at 201
Magnolia Street, Spartanburg, South Carolina.

IT IS SO ORDERED.


Wm. Thurmond Bishop
Judge

Columbia, South Carolina

This 22nd day of August, 1997.